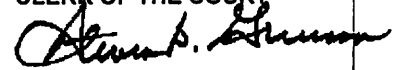


EXHIBIT B

Amended Answer to First Amended Complaint

EXHIBIT B

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GARG GOLDEN LAW FIRM
ANTHONY B. GOLDEN, ESQ.
Nevada Bar No. 9563
AMANDA J. BROOKHYSER, ESQ.
Nevada Bar No. 11526
3145 St. Rose Parkway, Suite 230
Henderson, Nevada 89052
Tel: (702) 850-0202
Fax: (702) 850-0204
Email: agolden@garggolden.com
Email: abrookhyser@garggolden.com

Counsel for Defendant Paula Hambly

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

PROCARE HOSPICE OF NEVADA, LLC,
a Nevada entity; GREG WALSKI, an
individual, ROBERTA WALSKI, an
individual, MARK BIRNBAUM, an
individual, CONNIE BIRNBAUM, an
individual, CLEVIS PARKER, an
individual,

Plaintiffs

v.

ADAM PERELGUT, an individual;
AMBER PERELGUT, an individual;
RACHEL HERNANDEZ, an individual;
PAULA HAMBLY, an individual;
EDUARDO LOPEZ, an individual;
JOSEFINA VIEYRA, an individual;
LAURA MUNOZ, an individual;
DANIELLE DAVIS, an individual; DAWN
BORK, an individual; JOAN WARD, an
individual; KATHLEEN ARFUSO, an
individual; CAESAR SOTO, an individual;
ALLISON RANDALL, an individual;
ONECARE HOSPICE, LLC, ONECARE
HEALTH SERVICES, LLC, ONECARE
HOME HEALTH SERVICES, LLC d/b/a

CASE NO.: A-21-827603-C

DEPT. NO.: XIII

**AMENDED ANSWER TO FIRST
AMENDED COMPLAINT, JURY
DEMAND, AND FIRST AMENDED
COUNTERCLAIM**

1 ONECARE HOME HEALTH AND
2 HOSPICE, a Nevada entity;
3 COMMUNITY HOME HEALTHCARE,
4 LLC; DOES 1-10; and ROE
5 CORPORATIONS 1-10, inclusive,
6
7 Defendants.

8 Defendant/Counterclaimant PAULA HAMBLY ("PAULA"), by and through
9 her counsel of record Anthony B. Golden, Esq., and Amanda J. Brookhyser, Esq., of
10 GARG GOLDEN LAW FIRM, hereby submits this Amended Answer to Plaintiffs'
11 First Amended Complaint and further submits this Amended Counterclaim against
12 Defendants PROCARE HOSPICE OF NEVADA, LLC ("PROCARE") and MARK
13 BIRNBAUM ("BIRNBAUM") as follows:

14 **AMENDED ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT**
15 **PARTIES AND JURISDICTION**

16 1. In answering Paragraphs 1, 2, 5, 7, 8, 9, 10 11, 12, 13, 14, 15, 16, 19, 20,
17 and 21 of the section entitled Parties and Jurisdiction, PAULA is without sufficient
18 information or knowledge to form a basis as to the truth or falsity of the allegations
19 contained therein and upon that basis, denies each and every allegation contained
20 therein.

21 2. In answering Paragraph 6 of the section entitled Parties and
22 Jurisdiction, PAULA admits that she is a former resident of Clark County, Nevada
23 and is now a resident of the State of Oregon and denies all remaining allegations.

24 3. PAULA admits the allegations as stated in Paragraphs 3 and 4 of the
25 section entitled Parties and Jurisdiction.

26 4. PAULA denies each and every allegation as set forth in paragraphs 17
27 and 18 of the section entitled Parties and Jurisdiction.

28 **FACTS**

5. In answering Paragraphs 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39,
46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, and 61 of the section entitled

1 Facts, PAULA is without sufficient information or knowledge to form a belief as to
2 the truth or falsity of the allegations contained therein and upon that basis, denies
3 each and every allegation contained therein.

4 6. In answering Paragraphs 22, 23, and 24 of the section entitled Facts,
5 PAULA, upon information and belief, admits the allegations contained therein.

6 7. PAULA admits the allegations as contained in Paragraphs 25, 41, 42,
7 43 and 44 of the section entitled Facts.

8 8. In answering Paragraph 27 of the section entitled Facts, PAULA admits
9 that she is a former employee of PROCARE and denies all remaining allegations.

10 9. In answering Paragraph 40 of the section entitled Facts, PAULA admits
11 that she is Amber Perelgut's mother and a former employee of PROCARE and denies
12 all remaining allegations.

13 10. In answering Paragraph 45 of the section entitled Facts, PAULA admits
14 that she was terminated on or about July 10, 2020 but denies each and every
15 allegation contained therein.

16 11. PAULA denies each and every allegation as set forth in Paragraphs 62,
17 63, 64, and 65 of the section entitled Facts as those allegations apply to her. As to
18 allegations that apply to other Defendants, PAULA is without sufficient information
19 or knowledge to form a belief as to the truth or falsity of the allegations contained
20 therein.

21 FIRST CAUSE OF ACTION

22 12. In answering Paragraph 66 of the First Cause of Action, PAULA repeats
23 and realleges her responses to Paragraphs 1 through 65 of the Complaint.

24 13. In answering Paragraph 67 of the First Cause of Action, PAULA is
25 without sufficient information or knowledge to form a belief as to the truth or falsity
26 of the allegations contained therein and upon that basis, denies each and every
27 allegation therein.

28 14. PAULA denies each and every allegation as set forth in Paragraphs 68,

69, 70, 71, 72, 73, 74, 75, 76, 77, and 78 of the First Cause of Action.

SECOND CAUSE OF ACTION

15. In answering Paragraph 79 of the Second Cause of Action, PAULA repeats and realleges her responses to Paragraphs 1 through 78 of the Complaint.

16. As Paragraph 80 of the Second Cause of Action contains legal conclusions, PAULA can neither admit nor deny the allegations contained therein.

17. PAULA denies each and every allegation as set forth in Paragraphs 81, 82, 83, 84, and 85 of the Second Cause of Action.

THIRD CAUSE OF ACTION

18. In answering Paragraph 86 of the Third Cause of Action, PAULA repeats and realleges her responses to Paragraphs 1 through 85 of the Complaint.

19. As Paragraphs 87, 88, and 89 of the Third Cause of Action concern other Defendants, PAULA can neither admit nor deny the allegations contained therein.

FOURTH CAUSE OF ACTION

20. In answering Paragraph 90 of the Fourth Cause of Action, PAULA repeats and realleges her responses to Paragraphs 1 through 89 of the Complaint.

21. PAULA denies each and every allegation as set forth in Paragraphs 691, 92, 93, 94, 95, and 96 of the Fourth Cause of Action.

FIFTH CAUSE OF ACTION

22. In answering Paragraph 97 of the Fifth Cause of Action, PAULA repeats and realleges her responses to Paragraphs 1 through 96 of the Complaint.

23. PAULA denies each and every allegation as set forth in Paragraphs 98, 99, 100, 101, 102, and 103 of the Fifth Cause of Action.

SIXTH CAUSE OF ACTION

24. In answering Paragraph 104 of the Sixth Cause of Action, PAULA repeats and realleges her responses to Paragraphs 1 through 103 of the Complaint.

25. PAULA denies each and every allegation as set forth in Paragraphs 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, and 115 of the Sixth Cause of Action.

1 **SEVENTH CAUSE OF ACTION**

2 26. In answering Paragraph 116 of the Seventh Cause of Action, PAULA
3 repeats and realleges her responses to Paragraphs 1 through 115 of the Complaint.

4 27. As Paragraphs 117, 118, and 119 of the Seventh Cause of Action concern
5 other Defendants, PAULA can neither admit nor deny the allegations contained
6 therein.

7 **EIGHTH CAUSE OF ACTION**

8 28. In answering Paragraph 120 of the Eighth Cause of Action, PAULA
9 repeats and realleges her responses to Paragraphs 1 through 119 of the Complaint.

10 29. As Paragraphs 121, 122, 123, 124, 125, and 126 of the Eighth Cause of
11 Action concern other Defendants, PAULA can neither admit nor deny the allegations
12 contained therein.

13 **AFFIRMATIVE DEFENSES**

14 1. The Complaint fails to state a claim on which relief can be granted.

15 2. To the extent applicable, the Complaint is barred by the applicable
16 statutes of limitations.

17 3. Defendant did not breach any duty, contractual or otherwise, owed to
18 Plaintiffs under state or federal law.

19 4. Plaintiff's alleged damages, if any, were in no way caused by, or the
20 result of, Defendant's acts or omissions, but were caused by circumstances, persons,
21 and/or entities for which and/or by whom Defendant is not and may not be held
22 responsible, including Plaintiffs, and for which Defendant cannot be held liable.

23 5. To the extent applicable, Plaintiffs have failed to mitigate damages, and
24 to the extent of such failure, any damages awarded to Plaintiffs should be reduced
25 accordingly.

26 6. Plaintiffs have failed to allege facts sufficient to justify an award of
27 punitive damages, liquidated damages, consequential damages or attorney's fees.

28 7. Defendant asserts that punitive damages and/or liquidated damages

1 constitute excessive fines prohibited by the United States and Nevada Constitutions.
2 The relevant statutes do not permit punitive damages, provide adequate standards
3 or safeguards for their application, and are void for vagueness under the due process
4 clause of the Fourteenth Amendment of the United States Constitution and in
5 accordance with Article 1, Section 8 of the Nevada Constitution.

6 8. Defendant is informed and believes that the facts to be developed
7 through discovery in this action may reveal additional affirmative defenses.
8 Therefore, Defendant reserves the right to amend this Answer to include any
9 additional affirmative defenses later found to be applicable.

10 9. Plaintiffs' claims are barred by the doctrines of waiver, estoppel, laches,
11 and unclean hands.

12 10. Plaintiffs' damages are the result of Plaintiffs' own acts or omissions,
13 whether negligent, intentional, or otherwise, and not the result of acts of omissions
14 of Defendant.

15 11. Plaintiffs have failed to allege facts sufficient to justify injunctive relief.

16 12. Plaintiffs failed to satisfy all conditions precedent to any rights they are
17 attempting to assert under their contract claims.

18 13. Any damages Plaintiffs claim are offset by amounts owed to Defendant.

19 14. Plaintiffs' contract claim fails for lack of consideration in the relevant
20 contract.

21 WHEREFORE, Defendant prays for judgment against Plaintiffs as follows:

- 22 1. That Plaintiffs take nothing by virtue of the First Amended Complaint;
23 2. That judgment be entered in favor of Defendant and against Plaintiffs;
24 3. That Defendant be awarded attorneys' fees and costs; and
25 4. For such other and further relief as the Court deems just and proper.

26 **AMENDED COUNTERCLAIM AND DEMAND FOR JURY TRIAL**

27 **PARTIES**

- 28 1. PAULA was a resident of Clark County, Nevada when the incidents

1 alleged in the Counterclaim took place. PAULA is now a resident of the State of
2 Oregon.

3 2. Upon information and belief, PROCARE is a business entity licensed to
4 do business in Clark County, Nevada.

5 3. Upon information and belief, Defendant BIRNBAUM is an individual
6 who resides in Clark County, Nevada.

7 **GENERAL ALLEGATIONS**

8 4. PAULA was hired by PROCARE in 2014 as a marketing liaison. She
9 was promoted to Marketing Director in June 2019.

10 5. When PAULA was promoted to Marketing Director, she was not given
11 a raise but was expected to be available twenty-four (24) hours a day, seven (7) days
12 a week and to take calls on weekends and during vacations.

13 6. While PAULA was an employee at PROCARE, her supervisors and the
14 owners of PROCARE would regularly make discriminatory and demeaning comments
15 to her about her age and gender.

16 7. Derrick Montemayor, who was PAULA's supervisor and, at the time, the
17 fiancé of an owner of PROCARE, told her that she was "too old for the job" and further
18 told her that his female employees should wear short skirts to work.

19 8. Mr. Montemayor made belittling comments to PAULA at work
20 luncheons, in front of referral sources and PAULA's accounts.

21 9. At one meeting in particular, in front of several members of
22 management and the owners, Mr. Montemayor berated PAULA for her marketing
23 report.

24 10. He removed Ms. Hambly from the field, where she was succeeding, and
25 only allowed her to call on referrals. There was no nondiscriminatory purpose for this
26 change.

27 11. Ms. Hambly reported this conduct to Human Resources, and no
28 disciplinary action was ever taken against Mr. Montemayor. Upon information and

1 belief, PAROCARE did not do any investigation into PAULA's allegations.

2 12. PAULA went further and reported Mr. Montemayor's behavior to one of
3 the owners, BIRNBAUM, who replied, "Well, you know he is family, and he sleeps
4 with the owner." Nothing was done.

5 13. Additionally, PAULA experienced other unlawful conduct while she was
6 employed by PROCARE.

7 14. BIRNBAUM, as recently as January 2020, would kiss PAULA on the
8 lips when he would see her. These kisses were not consented to by PAULA and were
9 not welcome.

10 15. BIRNBAUM had a habit of kissing female employees on the lips without
11 their consent or invitation. It was well-known by the female employees of PROCARE
12 that if they saw BIRNBAUM, they would need to prepare themselves for unwanted
13 physical contact.

14 16. BIRNBAUM's offensive conduct was also witnessed by customers of
15 PROCARE who also, upon information and belief, found it offensive and
16 inappropriate.

17 17. Every time PAULA worked with BIRNBAUM, or interacted with him at
18 work, she had to prepare herself for unwanted and offensive contact. PAULA would
19 even try to run her cheek away from BIRNBAUM in these instances to stop him from
20 making contact with her lips.

21 18. PAULA had to work with BIRNBAUM and, in many instances, had to
22 be in a car or a room alone with him. This caused PAULA significant emotional
23 distress as she was always anticipating his next offensive comment or more harmful
24 physical contact.

25 19. BIRNBAUM would regularly make demeaning comments about
26 younger female employees' appearances in front of PAULA, including making
27 comments about how the younger female employees do better on their knees.

28 20. Specifically, in addressing one female employee, BIRNBAUM

1 commented that one only needed to look at her knees to know she was a good
2 marketer.

3 21. BIRNBAUM engaged in this harmful and offensive conduct during
4 business hours, while PAULA was forced to work alongside him.

5 22. BIRNBAUM engaged in this harmful and offensive conduct during the
6 course and scope of his assigned activities on behalf of PROCARE. BIRNBAUM
7 further engaged in this harmful and offensive conduct with PROCARE's ratification.

8 23. It was foreseeable to PROCARE that BIRNBAUM would engage in such
9 harmful and offensive conduct towards PAULA as BIRNBAUM had a history of such
10 contact with other female employees and PROCARE, through its owners and agents,
11 was aware of such a history and did nothing to address it.

12 24. PAULA complained about BIRNBAUM's actions and his unwanted
13 physical contact on many, many occasions. She was told by PROCARE that
14 BIRNBAUM's behavior was inappropriate but there was nothing done about it.
15 BIRNBAUM continued this kind of unwanted physical contact with female employees
16 for the entirety of PAULA's employment with PROCARE.

17 25. PAULA began to hear rumors in January 2020 that she was going to be
18 fired. It was well-known to PAULA and to many of her co-employees that PROCARE
19 was attempting to terminate her because of her age.

20 26. Roberta Walski, who is an owner and Chief Executive Officer of
21 PROCARE, made comments such as the "only good thing about Paula is that she is
22 capable of closing."

23 27. In approximately February 2020, PAULA moved to Oregon. She had
24 already been working from home and PROCARE approved her move.

25 28. On March 3, 2020 PROCARE decided to eliminate PAULA's position
26 title even though the work of a marketing director was still necessary and was still
27 being performed by her.

28 29. Her pay was cut by more than \$40,000.00—from \$108,000.00 annually

1 plus commissions to \$70,000.00 annually with no commissions—because, as she was
2 told, she was “way over paid.”

3 30. PAULA was not given written notice of the decrease in her pay.

4 31. While PAULA’s pay was cut, Mr. Montemayor’s pay remained the same
5 even though he had been removed from the position of Director of Business
6 Development several years prior yet was allowed to keep the salary and the title so
7 as not to “break his spirit.”

8 32. Mr. Montemayor and PAULA were similarly situated in their titles as
9 Director of Business Development and Director of Marketing respectively.

10 33. In fact, three (3) female employees on PAULA’s team—all younger than
11 her but with less experience and seniority—made \$75,000.00, \$83,000.00, and
12 \$88,000.00 annually with commissions.

13 34. On June 29, 2020 during a phone call with numerous team members,
14 Kim Anderson, who was the new Chief Strategy Officer, demeaned PAULA in front
15 of her coworkers.

16 35. Ms. Anderson continued to target PAULA in several other phone
17 conversations on that day, berating her and chiding her for perceived mistakes that
18 PAULA did not make.

19 36. Ms. Anderson yelled at PAULA over the phone and told her that she cost
20 PROCARE accounts and that she “blew it.”

21 37. It was clear to PAULA that PROCARE, through its employees, agents,
22 and owners, created an environment that was so difficult and unpleasant for PAULA
23 that she would quit or PROCARE would be able to fire her under a pretense.

24 38. The working environment created by PROCARE, through its employees,
25 agents, and owners was hostile and discriminatory. PROCARE’s discriminatory
26 practices were witnessed by several employees who acknowledge that PAULA was
27 discriminated against because of her age.

28 39. PAULA sent a Complaint to Human Resources on June 29, 2020

1 concerning Ms. Anderson's conduct, and no action was taken. PAULA was wrongfully
2 terminated shortly after filing her Complaint on July 10, 2020 in retaliation.

3 40. PAULA timely filed a Complaint with the Equal Employment
4 Opportunity Commission (EEOC) concerning Defendant's conduct.

5 41. On or about March 12, 2021 PAULA received a Notice of Right to Sue
6 from the EEOC.

7 42. This action is timely filed pursuant to 42 U.S.C. § 2000e-5(f).

8 43. Plaintiff has exhausted all their administrative remedies on all claims
9 pled hereunder prior to filing this action with this Court.

10 **FIRST CAUSE OF ACTION**

11 **Battery**

12 **(Against BIRNBAUM)**

13 44. Plaintiff repeats and realleges all the foregoing allegations as though
14 fully set forth herein.

15 45. BIRNBAUM made a habit of kissing female employees, including
16 PAULA, on the lips without invitation or consent.

17 46. The physical contact by BIRNBAUM with PAULA's person was
18 unwanted, offensive, and harmful.

19 47. BIRNBAUM intended to cause such harmful and offensive contact with
20 PAULA as was his pattern and practice for the entirety of PAULA's employment with
21 PROCARE.

22 48. BIRNBAUM did cause harmful and offensive contact with PAULA.

23 49. PROCARE is vicariously liable for BIRNBAUM's actions because those
24 actions were not independent ventures, were committed during the very tasks
25 assigned to BIRNBAUM by PROCARE and were reasonably foreseeable.

26 50. As a direct, proximate and legal result of BIRNBAUM's actions, PAULA
27 has been injured.

28 51. As a direct, proximate, and legal result of BIRNBAUM's offensive and

1 harmful contact, Plaintiff has been damaged in excess of \$15,000.00.

2 52. BIRNBAUM is guilty of oppression, fraud, and/or malice, express or
3 implied, because BIRNBAUM knowingly and intentionally caused harmful and
4 offensive contact to the person of PAULA.

5 53. Plaintiff has been required to retain legal counsel to enforce her rights
6 and seeks recovery of all reasonable attorney's fees and costs incurred in this action.

7 **SECOND CAUSE OF ACTION**

8 **Assault**

9 **(Against BIRNBAUM)**

10 54. Plaintiff repeats and realleges all the foregoing allegations as though
11 fully set forth herein.

12 55. An actor commits assault when he causes another to fee apprehension
13 of harmful or offensive conduct.

14 56. On every occasion that PAULA knew she had to work with BIRNBAUM
15 or see him, she felt apprehension because she knew he would engage in offensive
16 contact by kissing her on the lips without invitation or consent.

17 57. BIRNBAUM's conduct was the direct and proximate cause of injury to
18 PAULA.

19 58. PROCARE is vicariously liable for BIRNBAUM's actions because those
20 actions were not independent ventures, were committed during the very tasks
21 assigned to BIRNBAUM by PROCARE and were reasonably foreseeable.

22 59. As a direct, proximate and legal result of BIRNBAUM's actions, PAULA
23 has been injured.

24 60. As a direct, proximate, and legal result of BIRNBAUM's offensive and
25 harmful contact, Plaintiff has been damaged in excess of \$15,000.00.

26 61. BIRNBAUM is guilty of oppression, fraud, and/or malice, express or
27 implied, because BIRNBAUM knowingly and intentionally caused harmful and
28 offensive contact to the person of PAULA.

1 62. Plaintiff has been required to retain legal counsel to enforce her rights
2 and seeks recovery of all reasonable attorney's fees and costs incurred in this action.

3 **THIRD CAUSE OF ACTION**

4 **Negligent Hiring, Training, Supervision, and Retention**

5 **(Against PROCARE)**

6 63. Plaintiff repeats and realleges all the foregoing allegations as though
7 fully set forth herein.

8 64. PROCARE had a duty to act reasonably in the hiring, training,
9 supervision, and retention of employees and agents.

10 65. PROCARE had a duty to train their employees on applicable policies
11 and procedures that must be followed when investigating a complaint such as that
12 made by Plaintiff in this matter.

13 66. PROCARE had a duty to supervise their employees in a reasonable
14 manner so as to assure that their employees were following all applicable policies and
15 procedures.

16 67. PROCARE had a duty to supervise all employees to assure that no
17 employee was taking discriminatory, harassing, or other improper actions against
18 another employee.

19 68. BIRNBAUM, Mr. Montemayor, Ms. Anderson, Ms. Walski, and other
20 unknown employees of PROCARE acted in harassing, discriminatory, and offensive
21 ways towards PAULA.

22 69. Upon information and belief, BIRNBAUM, Mr. Montemayor, Ms.
23 Anderson, Ms. Walski, and other unknown employees of PROCARE failed to
24 adequately protect PAULA from harassing, discriminatory, and offensive conduct
25 and failed to appropriately address and investigate such conduct when PAULA
26 brought it to their attention on multiple occasions.

27 70. PROCARE's conduct was the direct and proximate cause of injury to
28 PAULA.

71. As a direct, proximate and legal result of PROCARE's actions, PAULA has been injured.

72. As a direct, proximate, and legal result of PROCARE's actions, Plaintiff has been damaged in excess of \$15,000.00.

73. Plaintiff has been required to retain legal counsel to enforce her rights and seeks recovery of all reasonable attorney's fees and costs incurred in this action.

FOURTH CAUSE OF ACTION

Violation of the Fair Labor Standards Act

(Against PROCARE)

74. Plaintiff repeats and realleges all the foregoing allegations as though fully set forth herein.

75. At all relevant times, PAULA was an employee of PROCARE and PROCARE was her employer within the meaning of the Fair Labor Standards Act (FLSA).

76. In or around March 3, 2020 PROCARE eliminated PAULA's position title but kept her duties and responsibilities the same. Additionally, PROCARE cut her pay by more than \$40,000.00—from \$108,000.00 annually plus commissions to \$70,000.00 annually with no commissions—because, as she was told, she was “way over paid.”

77. While PAULA's pay was cut, Mr. Montemayor's pay remained the same even though he had been removed from the position of Director of Business Development several years prior yet was allowed to keep the salary and the title so as not to "break his spirit."

78. The actions of PROCARE as described herein constitute violations of the FLSA, including, among other provisions, its Equal Pay Act, for discrimination in pay based upon PAULA's gender.

79. PAROCARE knew or should have known of their unlawful conduct.

80. Mr. Montemayor and PAULA were similarly situated in their titles as

1 Director of Business Development and Director of Marketing respectively.

2 81. PROCARE is liable to PAULA for its unlawful conduct under the FLSA.

3 82. As a direct and proximate result of PROCARE's conduct, PAULA has
4 suffered irreparable injury and monetary damages.

5 83. PROCARE's conduct was willful as defined by the FLSA, thereby
6 warranting the imposition of liquidated damages.

7 84. As a direct, proximate, and legal result of PROCARE's actions, Plaintiff
8 has been damaged in excess of \$15,000.00.

9 85. Plaintiff has been required to retain legal counsel to enforce her rights
10 and seeks recovery of all reasonable attorney's fees and costs incurred in this action.

11 **FIFTH CAUSE OF ACTION**

12 **Declaratory Relief**

13 86. Plaintiff repeats and realleges all the foregoing allegations as though
14 fully set forth herein.

15 87. A justiciable controversy exists between PAULA and Defendants with
16 respect to the non-compete agreement and the restrictive covenants therein and
17 whether those agreements are enforceable.

18 88. There was no adequate consideration for the non-compete agreement
19 and the restrictive covenants therein as PAULA's compensation was reduced.
20 Moreover, the non-compete agreement and the restrictive covenants therein are
21 overly burdensome and overly broad, in violation of Nevada law.

22 89. This non-compete agreement and the restrictive covenants therein have
23 precluded PAULA from engaging in employment or other activity that she otherwise
24 would be able to engage in.

25 90. These issues are ripe for judicial determination.

26 91. Plaintiff respectfully requests this Honorable Court declare that the
27 non-compete agreement at issue in this case, and the restrictive covenants therein,
28 are unenforceable under Nevada law.

93. Plaintiff has been required to retain legal counsel to enforce her rights and seeks recovery of all reasonable attorney's fees and costs incurred in this action.

Injunctive Relief

101. Plaintiff has been required to retain legal counsel to enforce her rights and seeks recovery of all reasonable attorney's fees and costs incurred in this action.

SEVENTH CAUSE OF ACTION

Discrimination and Harassment Based on Sex in Violation of Title VII of the Civil Rights Act of 1964

102. Plaintiff repeats and realleges all the foregoing allegations as though fully set forth herein.

103. PAULA is a member of the class of persons protected by state and federal statutes prohibiting discrimination based on sex.

104. Defendant PROCARE as employer is subject to Title VII, 42 U.S.C. § 2000e, etc., as amended and, thus, have a legal obligation to provide PAULA a fair, non-discriminatory work environment and employment opportunities.

105. PROCARE refused to take reasonably adequate steps to prevent discrimination and harrassment against PAULA by knowingly favoring employees not of PAULA's protected class.

106. PROCARE discriminated against PAULA when they failed to treat her the same way as similarly situated employees not of PAULA's protected class.

107. PAULA was subjected to physical and verbal harassment by BIRNBAUM and Montemayor on a pervasive and ongoing basis.

108. No other similarly situated persons, not of PAULA's protected class, were subject to the same or substantially similar conduct.

109. PAULA suffered adverse economic impact due to PROCARE's unlawful treatment of her, including her termination.

110. PAULA was embarrassed, humiliated, angered, depressed, and discouraged by the discriminatory actions taken against her.

111. PAULA suffered compensable emotional and physical harm, including but not limited to, sleeplessness, anxiety, depression, hopelessness, and helplessness resulting from this unlawful discrimination by PROCARE.

112. PAULA is entitled to be fully compensated for her emotional disturbance by being forced to endure this discrimination.

1 113. Pursuant to the 1991 amendments to Title VII, PAULA is entitled to
2 recover punitive damages for PROCARE's intentional repeated violations of federal
3 and state civil rights laws.

4 114. PAULA suffered damages in an amount to be determined by the Jury.

5 115. PAULA is entitled to an award of reasonable attorney's fees.

6 116. PROCARE is guilty of oppression, fraud, and/or malice, express or
7 implied, as PROCARE knowingly and intentionally discriminated against PAULA
8 because of her sex.

9 117. Therefore, PAULA is entitled to recover damages for the sake of
10 example, to deter other employers from engaging in such conduct and by way of
11 punishing PROCARE in an amount to be determined by a Jury.

12 **EIGHTH CAUSE OF ACTION**

13 **Discrimination and Harassment Based on Sex in Violation of NRS 613.330(1)(a)**

14 118. Plaintiff repeats and realleges the foregoing allegations as if fully set
15 forth herein.

16 119. NRS 613.330(1)(a) demonstrates that an employer cannot discriminate
17 against any person with respect to the person's compensation, terms, conditions, or
18 privileges of employment because of her sex.

19 120. PROCARE refused to take reasonably adequate steps to prevent
20 discrimination against PAULA by knowingly favoring employees not of PAULA's
21 protected class.

22 121. PROCARE discriminated against PAULA when they failed to treat her
23 the same way as similarly situated employees not of PAULA's protected class.

24 122. PAULA was subjected to physical and verbal harassment by
25 BIRNBAUM and Montemayor on a pervasive and ongoing basis.

26 123. No other similarly situated persons, not of PAULA's protected class,
27 were subject to the same or substantially similar conduct.

28 124. PAULA suffered adverse economic impact due to PROCARE's unlawful

1 treatment of her, including her termination.

2 125. PAULA was embarrassed, humiliated, angered, depressed, and
3 discouraged by the discriminatory actions taken against her.

4 126. PAULA suffered compensable emotional and physical harm, including
5 but not limited to, sleeplessness, anxiety, depression, hopelessness, and helplessness
6 resulting from this unlawful discrimination by PROCARE.

7 127. PAULA is entitled to be fully compensated for her emotional disturbance
8 by being forced to endure this discrimination.

9 128. PAULA is entitled to recover punitive damages for PROCARE's
10 intentional repeated violations of NRS 613.330 et. seq.

11 129. PAULA suffered damages in an amount to be determined by the Jury.

12 130. PAULA is entitled to an award of reasonable attorney's fees.

13 131. PROCARE is guilty of oppression, fraud, and/or malice, express or
14 implied, as PROCARE knowingly and intentionally discriminated against PAULA
15 because of her sex.

16 132. Therefore, PAULA is entitled to recover damages for the same of
17 example, to deter other employers from engaging in such conduct and by way of
18 punishing PROCARE in an amount to be determined by a Jury.

19 **NINTH CAUSE OF ACTION**

20 **Retaliation in Violation of 42 U.S.C. § 2000e-3**

21 133. Plaintiff repeats and realleges the foregoing allegations as if fully set
22 forth herein.

23 134. In violation of 42 U.S.C. § 2000e-3 and NRS Chapter 613, Defendant
24 retaliated against Plaintiff after she complained about acts that she reasonably
25 believed were discriminatory.

26 135. There may be more detrimental acts of which Plaintiff is unaware which
27 may also constitute retaliation in that it harmed Plaintiff.

28 136. The actions and conduct by Defendant constitute illegal retaliation

1 which is prohibited by federal law.

2 137. Plaintiff suffered damages in an amount to be determined by a Jury.

3 138. Plaintiff is entitled to an award of reasonable attorney's fees.

4 139. Defendant is guilty of oppression, fraud, and/or malice, express or
5 implied, because Defendant knowingly and intentionally retaliated against Plaintiff
6 because she complained of acts they considered discriminatory.

7 140. Therefore, Plaintiff is entitled to recover damages for the sake of
8 example, to deter employers from engaging in such conduct and by way of punishing
9 Defendant in an amount to be determined by a Jury.

10 **TENTH CAUSE OF ACTION**

11 **Discrimination Based on Age in Violation of the Age Discrimination in Employment**
12 **Act and NRS 613.330(1)**

13 141. Plaintiff repeats and realleges the foregoing allegations as if fully set
14 forth herein.

15 142. It is the pattern and practice of PROCARE to treat employees differently
16 and negatively when the employee is among the older employees in the practice.
17 Because of, and but for, her age, PAULA would not have been subjected to the
18 inequitable imposition of adverse actions and termination.

19 143. PAULA was treated differently and negatively with regard to
20 performance standards, compensation, and standards of when discipline or adverse
21 actions were imposed, relative to younger employees of PROCARE at the time the
22 discriminatory actions referenced herein occurred.

23 144. For the reasons set forth herein and in the papers filed with the EEOC,
24 PROCARE violated 29 U.S.C. §623(a)(1) of the ADEA and NRS 613.330(1), by
25 unlawfully discrimination against PAULA due to her age, over 40, and by
26 discriminating against her in favor of younger employees.

27 145. Because PROCARE unlawfully discriminated against PAULA on
28 account of her age, in violation of federal and Nevada law, Defendant must pay

1 PAULA damages in an amount to be determined by the Jury at trial, including
2 compensatory damages for emotional pain, anguish, suffering, and inconvenience.

3 146. PAULA was embarrassed, humiliated, angered, depressed, and
4 discouraged by the discriminatory actions taken against her.

5 147. PROCARE is guilty of oppression, fraud, and/or malice, express or
6 implied, as PROCARE knowingly and intentionally discriminated against PAULA
7 because of her age.

8 148. Therefore, PAULA is entitled to recover damages for the sake of
9 example, to deter other employers from engaging in such conduct and by way of
10 punishing PROCARE in an amount to be determined by a Jury.

11 149. PAULA is entitled to recover punitive damages for PROCARE's
12 intentional repeated violations of NRS 613.330 et. seq.

13 150. PAULA suffered compensable emotional and physical harm, including
14 but not limited to, sleeplessness, anxiety, depression, hopelessness, and helplessness
15 resulting from this unlawful discrimination by PROCARE.

16 151. PAULA suffered adverse economic impact due to PROCARE's unlawful
17 treatment of her, including her termination.

18 152. PAULA is entitled to an award of reasonable attorney's fees.

19 **ELEVENTH CAUSE OF ACTION**

20 **Retaliation in Violation of the Age Discrimination in Employment Act and NRS**
21 **613.340(1)**

22 153. Plaintiff repeats and realleges the foregoing allegations as if fully set
23 forth herein.

24 154. Plaintiff engaged in activities in opposition to age bias and
25 discriminatory employment practices against her at PROCARE that were related to
26 her age, as set forth herein.

27 155. Plaintiff's activities in opposition to age bias and discriminatory
28 employment practices against her related to her age were protected by the ADEA.

157. Because PROCARE unlawfully retaliated against Plaintiff for engaging in protected activity in opposition to age bias and discriminatory employment practices against her at PROCARE that were related to her age, in violation of federal and Nevada law, PROCARE must pay Plaintiff damages in an amount to be determined at trial, for backpay, front pay, lost benefits, and compensatory damages for emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.

12 158. Because PROCARE has been guilty of oppression, fraud, or malice,
13 express or implied, PROCARE must pay Plaintiff an additional amount for the sake
14 of example and by way of punishment.

15 159. Plaintiff has had to procure the services of an attorney to protect her
16 rights and to secure compensation for damages incurred as a result of these violations
17 of the ADEA; therefore, she is entitled to recover reasonable attorney's fees against
18 PROCARE pursuant to 29 U.S.C. § 626(b).

PRAYER FOR RELIEF

20 WHEREFORE, Plaintiff respectfully requests that this Court enter judgment
21 for Plaintiff as follows:

- 22 1. Awarding judgment as appropriate and requiring Defendants to pay
23 Plaintiff's compensatory damages, consequential damages, special damages, and any
24 other damages described herein and to be proven at trial, including back pay, and
25 front pay, in an amount in excess of \$15,000.00;
- 26 2. Awarding prejudgment interest;
- 27 3. Awarding punitive damages;
- 28 4. Awarding Plaintiff fees and costs associated with bringing this action,

1 in addition to reasonable attorney's fees as provided by the United States and or the
2 Nevada statutes; and

3 5. Granting such other and further relief as this Court deems necessary
4 and proper.

5 **JURY DEMAND**

6 Plaintiff demands a jury trial on all issues triable by a jury herein.

7 Dated this 29th day of March, 2021.

8
9 GARG GOLDEN LAW FIRM

10
11 By Amanda J. Brookhyser
12 AMANDA J. BROOKHYSER
13 Nevada Bar No. 11526
14 3145 St. Rose Parkway, Suite 230
15 Henderson, Nevada 89052
16 (702) 850-0202
17 Counsel for Defendant Paula
18 Hambly
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CERTIFICATE OF SERVICE

I certify that on the 29th day of March, 2021, I electronically filed the foregoing
**AMENDED ANSWER TO FIRST AMENDED COMPLAINT, JURY DEMAND, AND
FIRST AMENDED COUNTERCLAIM** with the Clerk of the Court by using the e-
filing system, which served the following parties or their counsel electronically:

Joseph R. Ganley, Esq.
David M. Doto, Esq.
Richard L. Wade, Esq.
HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
(702) 385-2500
Counsel for Plaintiffs

By Jaclyn Castany
For Garg Golden Law Firm